

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION**

**CIVIL CASE NO. 2:11cv23**

<b>WILLIAM HOWARD MUSSIO,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>MICHAEL J. ASTRUE,</b>	)	
<b>Commissioner of Social Security,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**ORDER OF REMAND**

**THIS MATTER** is before the Court on the Plaintiff's Motion for Summary Judgment in Support of his Social Security Appeal [Doc. 11] and the Defendant's Motion for Summary Judgment [Doc. 20].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider these motions and to submit recommendations for their disposition.

On May 8, 2012, the Magistrate Judge filed a Memorandum and Recommendation in which he recommended vacating the Commissioner's decision and remanding this matter for further administrative action. [Doc.

23]. The parties were advised that any objections to the Magistrate Judge's conclusions and recommendations were to be filed in writing within fourteen days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Id., at 13]. The period within which to file objections expired on May 25, 2012 and no written objections to the Memorandum and Recommendation have been filed by either party.

Having conducted a careful review, the Court concludes that the Magistrate Judge's recommendation is supported by the record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that this matter be remanded. The Court makes one minor modification to the recommendation which would deny the Plaintiff's motion for summary judgment and grants that motion in part and denies it in part.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Plaintiff's Motion for Summary Judgment in Support of his Social Security Appeal [Doc. 11] is hereby **GRANTED** in part to the extent that the Plaintiff seeks reversal of the Commissioner's decision denying him disability benefits. To the extent that the Plaintiff seeks an immediate award of benefits, the Plaintiff's Motion is

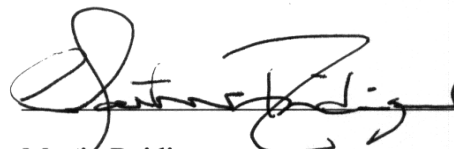
hereby **DENIED**.

**IT IS FURTHER ORDERED** that the Defendant's Motion for Summary Judgment [Doc. 20] is hereby **DENIED**.

**IT IS FURTHER ORDERED** that pursuant to this Court's authority to enter judgment affirming, modifying or reversing the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. §405(g), the decision of the Commissioner is hereby **REVERSED** and this case is hereby **REMANDED** to the Commissioner for further administrative action as to the following: (1) the Administrative Law Judge's (ALJ) weighing of physicians' opinions; (2) the ALJ's credibility determinations; (3) the ALJ's assessment of the residual functional capacity evaluation; and (4) the ALJ's questioning and consideration of the testimony of the vocational expert.

The Clerk of Court is instructed to enter Judgment simultaneously herewith.

Signed: May 30, 2012

  
Martin Reidinger  
United States District Judge

